

court of appeals does represent the people, because the judiciary is the check upon that branch of the government, to prevent their passing illegal and unconstitutional enactments.

The judicial power of the State acts more closely upon the people than any other department of the government. I assert that the poor man, the man of bone and sinew, the real working man of the State, looks and feels as strongly towards this principle of the election of judges and sheriffs and clerks, as to the election of the man who is to represent him in the legislative halls. I deny that if the people are competent, as they are, to elect the governor, and members of the general assembly, that they are not as fully competent to elect their judges. There may have been abuses in the elective system; and under what system have there not been abuses? You cannot change human nature by the system of appointment. The governor of the State is a mere man; and when he exercises the right which the constitution gives him, in appointing men to office, in nine cases out of ten he will appoint his own political friends. It is not the same way with the people of your State. The people of your State, as a general thing, when they can get hold of an honest man for judge, will elect him in preference to a dishonest one; and they can more easily discriminate among the men who live in their own neighborhoods, as to who is honest and who is dishonest; who is learned in the law, and who is unlearned in the law, than the governor of your State. There have been evidences of partisanship under an appointed judiciary that we have not seen under an elective judiciary. It is but the other day that I heard it asserted by a gentleman in my city that the supreme court of the United States in making its decision in the Dred Scott case, had acted as a partisan court; and he made a good argument to prove it. That is one of the illustrations of the appointive system; and it is one of the evidences to show that the appointive system cannot change human nature. Wherever you find human nature you will find it subject to sympathies and bias. The mere appointment or election of a man to an office cannot take away from him that sympathy or that bias.

Believing therefore as I do that the people of the State will not consent to give up this power they have exercised for fourty years, a power which the convention of Maryland in 1851 gave them in good faith, and which they of right ought not to be deprived of, because it is a right which they have exercised fourteen years and should have exercised ever since 1776, and in my opinion would have done it if it had not been that the old convention of 1776 were acting under the old prejudices derived from the colonial government, and derived this idea of the appointive system from England and incorpo-

rated it into the constitution, where it stood until the days of reform swept it away—believing this, it is my candid opinion that if any other system were to be incorporated into the constitution than an elective system of the judiciary, it would injure the constitution before the people and it is this which induces me to support the amendment of my friend from Baltimore city (Mr. Abbott.)

Mr. THURSTON. I think this is a question upon which we are all bound to give our testimony so far as we can with regard to which is the preferable system. The people whom I in part represent are made up mostly of mechanics and laboring men. I have taken great pains to converse with them whenever an opportunity occurred, and I have found them almost universally in favor of an appointive system. They have lived under both systems. We find that the elective system does not secure judges as unbiased and free from prejudice as the appointive system, of which my constituents, I am sure a large number of them, are in favor. I am sure that if we incorporate that system into the constitution it will secure in that neighborhood additional support to it.

Men are not fitted from mere personal popularity to fill the judicial offices. So far as my experience goes, we rather find men who are sometimes unpopular even more fitted for such offices than those who have attained great personal popularity—those who seek popularity for their own purposes. We know further that seeking for popularity and electioneering for office creates a state of mind wholly inconsistent with the proper exercise of the judicial functions. I am sure that the appointive system will gain strength to the constitution in the county which I represent, and so far as my own experience goes, having practiced under both systems, I have not a shadow of doubt that the appointive system gives the greatest satisfaction.

Besides, the people do in fact elect the judges even under that system, for they elect the man who has the appointing power. They control the party who appoints the judges, and it throws such a guard around the appointment that it may be said that the people do practically elect. I am confident that the appointive system is most popular in my section of the State.

Mr. STIRLING. It seems to me that this amendment is rather premature. I do not think it will settle anything; for the next section says that the judges shall be appointed by the governor.

The PRESIDENT. That can be stricken out.

Mr. STIRLING. It seems to me that the motion of the gentleman from Allegany (Mr. Thurston) ought not to have been withdrawn, because whether you adopt the appointive system or the elective system, there will certainly be judges appointed to fill va-